

PLANNING COMMISSION MINUTES

JANUARY 5, 2006

PUBLIC HEARING

DOCKET NO. 9-63-05W

***NOTE:** Commissioner Wells-Hatfield recused herself and did not hear or vote on this case. She left the room at approximately 3:19 p.m.

Change in zoning from M-2 Industrial to C-2 Commercial and waivers to omit the required tree canopy and interior landscaping, on property located at 7273, 7275, 7277 and 7279 Dixie Highway (Tax Block 115, Lot 12), containing 0.38 acres and being in Louisville Metro.

Owner/Applicant: Bennett E. and Anna C. Baker
14202 Barkis Way
Louisville, KY 40245

Contact Person: Bonny Manning, Consultant
Land Development Services
123 South Seventh Street
Louisville, KY 40202

Engineer/Designer: Mark Madison
Milestone Design Group
108 Daventry Lane Suite 300
Louisville, KY 40223

Existing Uses: Nail Salon, HVAC shop, tax office
Proposed Use: Nail Salon, HVAC shop, tax office, beauty school

Council District: 12 – Rick Blackwell
Staff Case Manager: Stephen Lutz, AICP

Notice of this public hearing appeared in The Courier Journal on December 15, 2005, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

The following spoke in favor of this request:

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Bonny Manning, Land Development Services, 123 South Seventh Street,
Louisville, 40202

Anna Baker, 14202 Barkin Way, Louisville, KY 40245

Mark Madison, Milestone Design Group, 108 Daventry Lane Suite 300,
Louisville, KY 40223

The following spoke in opposition:

No one spoke.

The following spoke neither for nor against:

No one spoke.

STAFF PRESENTATION:

Stephen Lutz presented the case. He showed a Power Point presentation which showed maps and photos of the site and the surrounding area. He pointed out that there is no landscaping on this site, nor is there room for any. The applicant is requesting a waiver for 100% of the landscaping requirement and 100% of the tree canopy requirement. The tree canopy requirement is transferable to a public park, an adjacent property, etc. During a discussion about the sidewalk in front of the site, Commissioner Adams mentioned that sidewalks must be a minimum of 5 feet wide on a major arterial roadway. Mr. Lutz said this use is compatible with the surrounding area. Commissioner Hamilton asked, regarding the parking lot in the front, if the area outside of the signs would be needed for maneuvering? The applicant said it was.

SUMMARY OF TESTIMONY OF PROPONENTS:

Bonny Manning, the applicant's representative, submitted an exhibit booklet to the Commissioners that also contained letters of support. She said the applicant already has the signed binding elements. She said this is an existing building and the applicant is not requesting any new freestanding signs – they can use the existing façade signs. Ms. Manning then described the contents of the booklet. She mentioned that the second-floor beauty school has its own parking lot behind the diner. She said a neighborhood meeting was held and the neighbors support this change. The existing uses are the same as the proposed uses. Also, the booklets contain the hours of operation for the businesses, and the expected number of employees.

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Commissioner Ernst said staff had suggested improving the façade of the building. In response to this, Anna Baker, the applicant, explained what is presently on the building and discussed some façade changes (added a canopy, recently painted the building) and said she is open to further suggestions.

There was some discussion about possibilities for landscaping. Commissioner Ernst suggested container plantings. Ms. Baker said there is a tiny amount of room along the side of the building for containers, but no room in the front. Ms. Baker and Commissioner Howard discussed a sign for a business that is no longer active; Ms. Baker agreed to take that down. Ms. Baker said she would be willing to put plant 5 trees at the Southwest Government Center property, and would work with staff on this. Commissioner Queenan asked that a sign that was hanging on the side of the building, and the temporary sign, be removed. Ms. Baker said she would agree to that. Ms. Manning said she would meet with Julia Williams, staff Landscape Architect, regarding the location of the 5 trees and some possible container planters.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke.

SUMMARY OF TESTIMONY OF THOSE NEITHER FOR NOR AGAINST:

No one spoke.

REBUTTAL:

Since there was no opposition, no rebuttal was needed.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the January 5, 2006 proceedings.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

Zoning

On a motion by Commissioner Hamilton, the following resolution was adopted:

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WHEREAS, The Commission finds that based upon testimony and evidence submitted during the public hearing, Land Development and Transportation Committee review, the staff report and the file of the case

WHEREAS, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

WHEREAS, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the legislative council of the Louisville/Jefferson County Metro Government that the change in zoning from **M-2 Industrial to C-2 Commercial** on property described in the attached legal description be **APPROVED ON CONDITION** that the signs on the front and side of the building mentioned during today's hearing be removed as requested by the Commissioners.

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan **SUBJECT** to the following binding elements:

Standard Binding Elements - Docket #9-7-05

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code . Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The square footage shall be limited to 7,135 square feet.
3. Signs shall be in accordance with Chapter 8.

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4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
6. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance permit is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
7. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
8. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs,

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successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 5, 2006 Planning Commission meeting.
12. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval.
13. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
14. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

The vote was as follows:

YES: Commissioners Howard, Ernst, Carlson, Abstain, Queenan, Hamilton, and Adams.

NO: No one.

NOT PRESENT: Commissioner Jones.

ABSTAINING: Commissioner Wells-Hatfield (recused.)

Waivers

On a motion by Commissioner Hamilton, the following resolution was adopted:

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WHEREAS, the Louisville Metro Planning Commission finds that the site is currently paved, or covered with structures, in its entirety and was developed many years ago before there were any code requirements for landscaping or tree canopy; and

WHEREAS, the Commission further finds that the proposed rezoning is essentially requested to bring the zoning classification in line with the actual uses on the site, and for this reason, these waivers seem unavoidable; and

WHEREAS, the Commission further finds that the applicant has promised to try to incorporate other design measures that exceed the minimums of the district, to compensate for non-compliance with the requirements to be waived; and

WHEREAS, the Commission further finds that strict application of the provisions of the regulation would require the applicant to demolish part of the structure or eliminate the parking in the front of the building, and would therefore deprive applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant; and

WHEREAS, The Commission finds that the requested waivers are in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **GRANT** a waiver to omit all required tree canopy and all required interior Vehicular Use Area landscaping.

The vote was as follows:

YES: Commissioners Howard, Ernst, Carlson, Abstain, Queenan, Hamilton, and Adams.

NO: No one.

NOT PRESENT: Commissioner Jones.

ABSTAINING: Commissioner Wells-Hatfield (recused.)

PROPERTY DESCRIPTION

BEGINNING at a point in the easterly right-of-way line of Dixie Highway at its intersection with the southerly right-of-way line of Guttermuth Road, a 16' roadway, thence with said southerly line of Guttermuth Road south 74 degrees 37 minutes 02 seconds east 248.93 feet to a point, thence leaving said roadway south 25 degrees 03 minutes 46 seconds west 60.00 feet to a point; thence north 74 degrees 37 minutes 02 seconds west 242.92 feet to a point in the easterly right-of-way line of Dixie Highway aforementioned; thence with said easterly right-of-way line north 19 degrees 20 minutes 00 seconds east 59.29 feet to a point, the **POINT OF BEGINNING** and containing 14,545 square feet or 0.334 acres, more or less.

BEING the same property conveyed to Bennet E. & Anna C. Baker of record in Deed Book 5364, page 664 in the Office of the Clerk of Jefferson County, Kentucky.

RECEIVED

OCT 17 2005

PLANNING &
DESIGN SERVICES

9-63-05W

Staff Report
December 29, 2005



Case:	9-63-05
Project Name:	Baker Commercial Center
Location:	7273-7279 Dixie Highway
Owner/Applicant:	E. Bennett, Anna C. Baker
Engineer:	Milestone Design Group
Area:	0.33 acres
Form District:	SMC
Zoning District:	M-2
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Stephen A. Lutz, AICP

Request M-2 to C-2

Staff Recommendation Approval, with binding elements

Case Summary / Background
Summary

The applicant proposes to rezone the property to bring the existing and any future commercial uses into conformance with the C-2 commercial zoning class. There are no M-2 uses currently on the property. All of the current uses are commercial in nature. The applicant requests C-2 commercial rather than C-1 commercial because this is the zoning class needed for the HVAC contractor's shop on-site. The total size of the building is 7,135 square feet.

Site Context



Land Use / Zoning District / Form District

	Land Use	Zoning	Form District
Subject			
Existing	Beauty school, tax office Nail salon, contractor's shop	M-2	SMC
Proposed	Same	C-2	SMC
Surrounding			
North	Gas station	M-2	SMC
South	Commercial	C-2	SMC
East	Commercial/industrial	M-2	SMC
West	Commercial	C-2	SMC

Background**Project History**

Note: The following information represents staff analysis of the subject property with respect to site inspection/observation, sound planning practices, and adopted policies and regulations of the jurisdiction. Materials submitted by the applicant or their representative prior to the deadline for filing information related to cases docketed for this hearing were reviewed and specifically applied in the staff review of this request. The board is advised to consider this staff report as well as new information introduced at the hearing in formulating their decision.

Staff Findings**To be analyzed in the Public Hearing Report:**

Relationship to Comprehensive Plan - Cornerstone 2020 Plan Elements:

Community Form: At the Land Development and Transportation Committee meetings on this case, there were no major issues identified. The structures will remain the same as existing, and the land uses will also remain the same. The surrounding area is all developed with commercial and industrial uses, and this proposal fits in with the surrounding area and the Suburban Marketplace form district.

The site inspection committee felt that this rezoning was appropriate given the area, the fact that it is already developed and due to the limited options for redeveloping the property without completely demolishing the existing structures.

In addition, the site inspection committee felt that removing the existing curb cut on Dixie Highway was a positive element to this proposal, and that it would improve traffic safety. The committee also felt that the waivers for interior landscaping and tree canopy were justified, given that there is not way to provide any landscaping on this site without substantially destroying either the structures themselves or the parking lot. The committee did, however, recommend that some sort of façade treatment on the front of the building would be a positive addition to the project.

Staff finds that this project meets the requirements of the applicable Plan Elements (3.1 through 3.8), in that the buildings exist, and that the uses are consistent with the surrounding area and the Suburban Marketplace Corridor form district.

Transportation:

Dixie Highway is currently a major arterial, with a high volume of fast moving traffic. The applicant is being required to close an existing curb cut on Dixie as part of this project and to access the property off of Guttermuth Road. This will result in a safety improvement for motorists on Dixie. For this reason, this project meeting the applicable Comprehensive Plan guideline (7.6)

Relationship to Neighborhood, Small Area, Corridor or Other Plan(s)

No small area studies exist for this area.

WAIVER:

A waiver is requested to omit all required tree canopy and all required interior Vehicular Use Area landscaping.

Conditions to be met to grant the waiver:

1. The waiver will not adversely affect property owners.
2. The waiver will not violate the guidelines of the Comprehensive Plan.
3. The extend of the waiver regulation is the minimum necessary to afford relief to the applicant.

And:

The applicant has incorporated other design measures that exceed the minimums of the district, which compensate for non-compliance with the requirements to be waived.

Or:

That strict application of the provisions of the regulation would deprive applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

Staff analysis:

1. The site is currently paved, or covered with structures, in its entirety and was developed many years ago before there were any code requirements for landscaping or tree canopy. The proposed rezoning is essentially requested to bring the zoning classification in line with the actual uses on the site. For this reason, these waivers seem unavoidable.

The applicant should address if any other design measures could be incorporated to compensate for non-compliance with regulations. Staff suggests improving the façade of the structure.

Denial of the waiver would require the applicant to demolish part of the structure or eliminate the parking in the front of the building.

Attached Documents / Information

1. Zoning Map

Notification

The following forms of notification were provided pertaining to this proposal:

Date	Description	Recipients
12 days before the meeting	LD&T notice	APO & Neighborhood Groups
35 days before public hearing	Public Hearing Notice	APO & Neighborhood Groups

Standard Binding Elements - Docket #9-7-05

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compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

6. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance permit is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
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9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
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All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

Name

Title

Date

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan
SUBJECT to the following binding elements:

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